

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Matthew Davis,	)	C/A No. 2:05-679-MBS-AJ
	)	
Petitioner,	)	
	)	
v.	)	<b>OPINION AND</b>
	)	<b>ORDER</b>
	)	
United States of America; Mr. Alberto	)	
Gonzales, U.S. Attorney General; Anna	)	
Mills S. Wagoner, U.S. Attorney for the	)	
Middle District of North Carolina; Jonathan	)	
S. Gasser, U.S. Attorney for the District of	)	
South Carolina; Barbara N. Bowens,	)	
Assistant U.S. Attorney for the District of	)	
South Carolina; and Warden, Charleston	)	
County Detention Center	)	
	)	
Respondents.	)	
	)	

Petitioner is incarcerated at F.C.I. Butner in North Carolina but was detained at the Charleston County Detention Center at the time of filing of this action. He brings this action pursuant to 22 U.S.C. § 2255 seeking to vacate, set aside, or correct his sentence. Petitioner has filed several previous petitions in this court and in the Fourth Circuit Court of Appeals seeking to vacate his sentence.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for a Report and Recommendation (“Report and Recommendation”). The Magistrate Judge reviewed the pro se complaint pursuant to the provisions of 28 U.S.C. § 1915. The Magistrate Judge filed a Report and Recommendation on March 23, 2005, and recommended that the captioned case be dismissed without prejudice and

without issuance of process. Petitioner filed objections to the Report and Recommendation on March 31, 2005.

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. Mathews v. Weber, 423 U.S. 261, 270 (1976). The responsibility for making a final determination remains with this court. Id. The district court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The district court is obligated to conduct a *de novo* review of every portion of the Report and Recommendation to which objections have been filed. Id. However, the court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

Petitioner claims that the Magistrate Judge erred in treating the current petition as a successive § 2255 petition. Plaintiff filed a § 2255 petition in 2002 in North Carolina and his appeal was denied by the Fourth Circuit Court of Appeals. See Davis v. United States, 2002 WL 1009728 (M.D.N.C. 2002), appeal denied, United States v. Davis, 55 Fed. Appx. 192 (4th Cir. 2003). As the Magistrate Judge explained in his Report and Recommendation, Petitioner cannot file another petition to vacate his sentence unless he first seeks leave from the appropriate court of appeals. See 28 U.S.C. § 2244. Absent certification from the Fourth Circuit Court of Appeals, this court cannot re-hear a § 2255 petition. Petitioner's objection is without merit.

The court adopts the Report and Recommendation and incorporates it herein by reference. For the foregoing reasons, the captioned case is hereby **dismissed** without prejudice and without

issuance and service of process.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Court

Columbia, South Carolina  
November 21, 2005